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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

PAUL H.,

Petitioner,

v.

THE SUPERIOR COURT OF  
MENDOCINO COUNTY,

Respondent;

MENDOCINO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY et al.,

Real Parties in Interest.

A144880

(Mendocino County  
Super. Ct. Nos. SCUK-JVSQ-14-  
16959, SCUK-JVSQ-14-16960)

Petitioner, the father of 10-year-old W.H. and seven-year-old M.H., challenges the juvenile court's April 8, 2015 order denying his request for a bonding study<sup>1</sup> and the court's order setting a Welfare and Institutions Code section 366.26 hearing for August 5, 2015.<sup>2</sup> We shall deny the petition for the reasons explained below.

<sup>1</sup> A "bonding study" is a report, based on a mental health professional's observations, which assesses how bonded or attached a child is to a parent or other caretaker and vice versa. (See Arredondo & Edwards, *Attachment, Bonding, and Reciprocal Connectedness* (2000) 2 J. Center for Families, Children & Cts. 109.)

<sup>2</sup> Unless otherwise noted all statutory references are to the Welfare and Institutions Code.

## **FACTUAL AND PROCEDURAL BACKGROUND**

W.H. and M.H. were detained from their father's residence on March 5, 2014. The petition alleged, pursuant to section 300, subdivision (b), that the children have suffered or were at substantial risk of suffering serious physical harm, that the father willfully or negligently failed to supervise or protect them from the conduct of the custodian with whom they were left, that he willfully or negligently failed to provide them with adequate food, clothing, shelter or medical treatment, and that due to the mother's mental illness, developmental disability, or substance abuse, she was unable to provide regular care for them. Specifically, the petition alleged that the father repeatedly allowed the children to spend unsupervised time with their mother, despite the fact that they were unsafe in her care due to her severe mental health issues. It alleged that he allowed the children to be "around transients and strangers that he allows to stay in his home, placing his children at risk of harm." It asserted that he continued to utilize inappropriate caregivers to watch his children, despite having signed a "Child Protective Services Safety Plan" with Children and Family Services of the Mendocino County Health and Human Services Agency (the agency) in which he agreed not to do so. It also claimed that the father did not meet the basic needs of his children, who appeared to be unbathed and smelled of body odor and presumed animal urine. Both children appeared to have lost weight since an earlier contact with the social worker in January 2014, and they reported being hungry.<sup>3</sup> Finally, the petition alleged that the children were suffering or were at substantial risk of suffering serious emotional harm; they were exhibiting symptoms of posttraumatic stress disorder and a therapist was concerned that their environment was unhealthy and caused them mental instability.

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<sup>3</sup> The petition also alleged that the mother, the noncustodial parent, is incapacitated by chronic mental health illness that severely impairs her ability to provide care for the children, making her incapable of doing so. Because the appellate petition raises issues concerning the juvenile court's rulings only as they affect the father, we refer to allegations pertaining to the mother only insofar as they provide context for the court's rulings concerning the father.

On March 7, 2014, the agency submitted a detention report. According to the report, W.H. and M.H. had been referred to the agency due to allegations of general neglect. M.H. had been diagnosed with posttraumatic stress disorder and tended to break down crying without provocation. He regularly came to school smelling of cat urine and cigarettes; his clothes did not fit and his sneakers were full of holes. He reported going to bed hungry each night and relied on his older brother, W.H., to get him ready for school each day. M.H. stated that on one occasion he had been compelled to awaken in the middle of the night, find a flashlight, and go to his mother's house, unsupervised by the father. The mother had previously lost custody rights to the children due to documented episodes of bizarre behavior.

W.H. was more reticent than his brother in discussing his father. It had previously been noted that the father became very angry at W.H. whenever he spoke to someone at school or to his therapist. The social worker observed that W.H., like his brother, had a distinct body odor and his clothes smelled musty and unclean. He wore rubber rain boots directly over his feet. W.H. confirmed that typically he got his brother up each day to get ready for school while the adults were asleep. Frequently, the two boys walked to see their mother when their father was not present. W.H. also confirmed that he and his brother had recently spent the weekend with a caregiver, it was determined, who was listed on the safety plan as being inappropriate. The agency concluded that the father was not complying with the plan. On one occasion, the boys came home when a man suspected by law enforcement of child sexual abuse was the only adult there.

Between December 2003 and March 2014 the boys had been the subject of 40 referrals to the agency. The referrals typically alleged emotional abuse, physical abuse and/or general neglect by one or both parents. One referral which substantiated general neglect by the father necessitated an immediate response by the agency.

The father's criminal background check indicated that he had used 11 different aliases. The report therefore cautioned that the father might have more arrests or conviction than were listed in the report. The report indicated that between 1993 and 2012 father was arrested numerous times for driving under the influence, driving with a

suspended license, domestic violence, evading a peace officer, reckless driving, probation violations, failure to appear, receiving stolen property, vehicle theft, being a felon in possession of a firearm, obstructing a peace officer, and possessing a controlled substance. He had felony convictions in 1993 for possession of a controlled substance, and in 1997 for vehicular theft, burglary and receiving stolen property. In 2003 he was returned to prison for violation of his parole.

Between September 2013 and March 2014 the social worker conducted six investigations involving this family. Each time the father was offered voluntary services to assist with child care but he repeatedly declined those services. The children were referred for weekly counseling sessions, but the father consistently refused to participate in family counseling with his sons. As mentioned above, father agreed to the agency's safety plan but he violated several of its provisions. Thus, in its March 10, 2014 report, the agency concluded that there were no additional services or interventions that could be provided that would eliminate the need for removal of the children.

On March 10, 2014, the court temporarily detained the children and set a contested jurisdictional hearing for April 9, 2014. According to the agency's report submitted for the hearing, the boys had two older siblings—20-year-old and 14-year-old siblings—neither of whom was living with their parents. The report explained the details of the father's safety plan in which, among other things, he committed not to allow the children to go to their mother's house unsupervised (due to her erratic behavior) and not to permit the children to be cared for in the home of a particular family friend, who had been convicted of shooting sheriff's deputies. Despite signing the plan, the father violated both of these provisions. In addition, based on the sheriff's report, the father was growing a large illegal marijuana crop on his property and, at times, there was an unknown armed person at the property. The father allegedly engaged in illegal activities at home when the boys were present. He routinely permitted adults to stay in his home when he was not there. On one occasion he permitted a suspected pedophile to be in the home alone with the boys.

At the April 9 hearing, the court found by a preponderance of the evidence that the children had suffered or were at substantial risk of suffering serious, non-accidental, physical harm. The court cited the children's statements that the father had burned M.H. and kicked him in the groin and evidence of excessive spanking. The court also found that the father did not provide adequate care or supervision for the children. Specifically, the father repeatedly permitted the children to be unsupervised with the mother, although they were unsafe in her care. The court sustained the allegation that the father placed the children at risk by allowing transients or strangers to stay in his home. He had people with criminal histories work in his marijuana gardens. The court also found that the father relied on inappropriate caregivers for the children, notwithstanding his having signed the safety plan. Further, the court found that the father was unable to meet the children's basic needs; they often were dirty, odiferous, and ill-clad. Moreover, they appeared to be thin and reported being hungry.<sup>4</sup>

On May 7, 2014, the agency filed a disposition report (followed by a May 14 addendum that related solely to the mother). The agency's preferred goal stated in the report was that the children be reunified with the father. The report expanded: "The father . . . remains the most viable option for reunification with [the children]. The father appears to have a close connection with his sons even though the behaviors he has demonstrated around them have often been inappropriate in the past. [The father's] educational level is unknown; however, he appears articulate at meetings and provides responses to questions suggesting he knows what is being asked of him and the reasoning behind it. [He] has stated to agency staff that he is willing to cooperate with the requirements of his case plan in order to comply with reunification services. . . ." The agency recommended that the father participate in an intake support group, family counseling, parenting classes, and substance abuse assessment and treatment, if

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<sup>4</sup> The court rejected an additional jurisdictional allegation based on an incident when the father chased his five- or six-year-old child with a chainsaw. Although the court found the incident troubling, it concluded that this was done in "jest or in fun" and was not intended to terrify the child.

appropriate. It also recommended that he be given housing assistance. Finally, it recommended the father have a minimum of one hour weekly supervised visits with the children.

At the disposition hearing the court acknowledged the father's close bond with his sons, but recognized that there was also a multi-year history of referrals with multiple sustained allegations. Furthermore, the children had been showing signs of distress, which had improved since they were living with their grandmother. The court then ordered family reunification services for father, including individual and family therapy, family empowerment, and parenting classes. The court did not order substance abuse testing or treatment, although it urged the agency to monitor that issue and determine if the plan needed to be modified.

By the six-month review on November 19, 2014, the situation had deteriorated. Reunification services to the mother were terminated completely. Concerning the father, the agency's report stated: "In the last six months, [father] made virtually no progress in resolving his issues. The probability of him reunifying with the children is extremely low. Not only has the father failed to improve his situation, he has continued to hurt his children emotionally by not showing up for their visits and participating in illegal behaviors. The father is incarcerated for three felonies and depending on the outcome may or may not participate in services for reunification. It would be beneficial to the children at this time to terminate reunification services to the father, but because the children are older than three years old, the father is entitled to six more months of reunification services." The court ordered that reunification services for the father be continued.

The situation was not improved by the 12-month review and the agency recommended that father's services be terminated. The agency filed its 12-month status report on March 9, 2015. Father had been incarcerated since September 4, 2014. When writing to his children he was required to mail his letters through the agency, but twice had failed to do so, sending them instead to his mother to forward to the children. Prior to his incarceration, he had not enrolled or participated in any of the four programs—

Family Empowerment Group, Breaking the Cycle, parenting classes or basic communication services—which were part of his case plan. He had not contacted any of the agency-approved therapists before his incarceration. The agency concluded, “There is no evidence that [the father] has a safe home or resources to provide for the children. He has demonstrated minimal effort to reunify with his children.” In the agency’s estimation, the chances of returning the children to the father were “extremely low.”

At the 12-month review hearing on April 8, 2015, the court adopted the agency’s recommendations. It terminated father’s services, but allowed him to continue visiting the children, pending a permanent decision regarding their status. The court acknowledged that the boys loved their father, but also recognized the conflicts in that bond. The court scheduled a hearing to adopt a permanent plan for the boys pursuant to section 366.26.

The father then verbally requested the court to order a bonding study. The court denied the request without prejudice to renewing it in writing and demonstrating good cause for the study. The court explained that it did not place great weight on such studies because they are limited to a snapshot of a single moment in time. In this case, where the father had been the custodial parent for most of the children’s lives, “there should be a wealth of information about the bond there that is perhaps more important than a psychologist observing a one- or two-hour visit.” The court continued: “Second, and the reason I’m denying this without prejudice, there could be a change of circumstances, but right now I can’t see how anyone could formulate a considered or helpful opinion for this court after seeing a noncontact visit in a tiny room at the jail for even an hour or two hours. It’s simply not a natural setting to observe parent/child interactions in a meaningful way that would give this court helpful information about what the best permanent plan is for the children.”

On April 13, 2015, the father filed notices of intent to file writ petitions concerning both children. The petition and the agency’s opposition have now been received and considered.

## DISCUSSION

The petition challenges the order setting the section 366.26 hearing on the single ground that the juvenile court abused its discretion in denying the father's request for a bonding study. The father requests that we stay the section 366.26 hearing pending the completion of the study.

The decision whether to order a bonding study lies within the juvenile court's discretion. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1341.) On review, we inquire "whether, under all the evidence viewed in a light most favorable to the juvenile court's action, the juvenile court could have reasonably refrained from ordering a bonding study." (*Ibid.*)

Here, petitioner contends that it was unreasonable to deny his request for a bonding study because of the importance of such a study in determining whether termination of his parental rights would cause serious detriment to the minors. Such a finding will be relevant to the determination, under section 366.26, subdivision (c)(1)(B)(1), whether an exception to the statutory preference for adoption should apply because termination of parental rights would be detrimental to the child due to the parent's maintenance of regular visitation and contact with the child "and the child would benefit from continuing the relationship."

However, the reasons given by the trial judge for declining to order the bonding study were entirely reasonable. In addition to the fact that the request was made "at such a late stage in the proceedings" (see *In re Richard C.* (1998) 68 Cal.App.4th 1191, 1195), the court felt that such a study would not be likely in this case to provide helpful information. As the court pointed out, it was well aware that the boys loved their father and that the father had a "close bond" with both children. No one disputed the existence of that bond. The concern in this case is that, notwithstanding their loving relationship, the father is unable to provide a safe and healthful environment for his sons. The boys' weight loss, hunger, unkempt condition, physical abuse, and supervision by unsafe caretakers are all critical problems, notwithstanding the strength of the relationship between the father and the boys. As the court reasonably concluded, a study based on a



brief prison visit would not be likely to provide additional information helpful to the court in determining at the section 366.26 hearing whether “the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

### **DISPOSITION**

The petition for an extraordinary writ is denied. Our decision is immediately final as to this court. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(2)(A).)

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Pollak, Acting P.J.

We concur:

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Siggins, J.

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Jenkins, J.